

Application No. : 10/789,815
Amdt. Dated : February 9, 2007
Reply To O.A. Of : September 12, 2006

REMARKS

The Applicant thanks the Examiner for his careful and thoughtful examination of the present application. By way of summary, Claims 1, 4-25, and 27-38 were pending in this application. In the present amendment, the Applicant has canceled Claims 5, 6, 15, 16, 26, 28, and 35 without prejudice or disclaimer and has amended Claims 1, 7, 8, 14, 17, 24, 25, 27, 31, and 33. Accordingly, Claims 1, 4, 7-14, 17-25, 27, 29-34, and 36-38 remain pending for consideration.

The Applicant would like to thank Examiner Tony Ko for the interview extended to the Applicant's counsel of record, John M. Grover, on December 7, 2006. During the interview, an agreement was reached relating to the language of Claims 1 and 14. Accordingly, the Applicant has amended Claims 1 and 14 along the lines discussed in the interview. Additionally, the Applicant has amended Claims 25 and 31 along the same lines. Therefore, the Applicant respectfully requests reconsideration of the pending claims.

Amendments To The Drawings

In the July 19, 2006 Amendment submitted in response to the Office Action dated April 19, 2006, the Applicant submitted Substitute Formal Drawings of Figures 1-5. The Examiner has not yet indicated whether these drawings were entered, and the Applicant requests clarification as to the status of the drawings.

Information Disclosure Statement

The Applicant filed an Information Disclosure Statement and accompanying PTO/SB/08 equivalent citing 6 references on June 9, 2006. The Applicant notes that the PTO/SB/08 equivalent was not returned, nor was inclusion of the same marked on the Cover Sheet of the Final Office Action dated September 12, 2006. Accordingly, the Applicant respectfully requests that the June 9, 2006 IDS be properly considered, and a copy of the submitted PTO/SB/08 equivalent, including an indication of the consideration, be returned in a next communication from the Patent Office.

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Rejection Of Claims 1, 4-9, 14-16, 18-21, 24, 25, 27-31, and 33-36 Under 35 U.S.C.

§ 102

The Final Office Action rejected Claims 1, 4-9, 14-16, 18-21, 24, 25, 27-31, and 33-36 under 35 U.S.C. § 102 as being anticipated by U.S. Patent No. 6,388,707, issued to Suda (the '707 patent). The Applicant respectfully traverses this rejection because the '707 patent fails to identically teach every element of the claims. See M.P.E.P. § 2131 (stating that in order to anticipate a claim, a prior art reference must identically teach every element of the claim).

Claims 1, 14, 25, and 31

The Final Office Action maintains that the '707 patent discloses a flexible eye cup including a pliable member capable of substantially for fitting an eye socket of a user. The Applicant respectfully disagrees and submits that the claims are patentable for at least the reasons noted in the response submitted July 19, 2006 to the Office Action dated April 19, 2006. Nevertheless, to advance prosecution, and pursuant to the agreement reached with the Examiner, Applicant has amended Claims 1 and 14. The Applicant has also amended Claims 25 and 31 along the same lines.

The '707 patent does not teach or suggest at least "an infrared light source capable of illuminating the subject to be viewed by the user through the night vision device," as recited by amended Claim 1, at least "receiving image data of objects illuminated by an infrared light source associated with a night vision device," as recited by amended Claim 14, at least "means for emitting infrared light towards the subjects," as recited by amended Claim 25, or at least "an infrared light source configured to illuminate an object to be viewed by a user of the night vision scope," as recited by amended Claim 31. Rather, the '707 patent discloses illuminating the eyeball of an operator of a camera with an infrared light and detecting the reflection from the cornea to detect the position of a line of sight. See the '707 patent at col. 6, ll. 36-40; col. 9, ll. 40-42; and col. 58, l. 65 – col. 59, l. 1. Therefore, the Applicant respectfully requests that the Examiner withdraw the rejections of Claims 1, 14, 25, and 31.

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Claims 4 and 7-9

As described above, Applicant submits that amended Claim 1 is not anticipated by the '707 patent. Claims 4 and 7-9 each depend from Claim 1. Thus, Claims 4 and 7-9 include all the features of amended Claim 1 and recite unique combinations of additional features not taught or suggested by the cited references. Therefore, the Applicant respectfully requests that the Examiner withdraw the rejections of Claims 4 and 7-9.

Claims 18-21 and 24

As described above, the Applicant submits that amended Claim 14 is not anticipated by the '707 patent. Claims 18-21 and 24 each depend from Claim 14. Thus, Claims 18-21 and 24 include all the features of amended Claim 14 and recite unique combinations of additional features not taught or suggested by the cited references. Therefore, the Applicant respectfully requests that the Examiner withdraw the rejections of Claims 18-21 and 24.

Claims 27, 29, and 30

As described above, the Applicant submits that amended Claim 25 is not anticipated by the '707 patent. Claims 27, 29, and 30 each depend from Claim 25. Thus, Claims 27, 29, and 30 include all the features of amended Claim 25 and recite unique combinations of additional features not taught or suggested by the cited references. Therefore, the Applicant respectfully requests that the Examiner withdraw the rejections of Claims 27, 29, and 30.

Claims 33, 34, and 36

As described above, the Applicant submits that amended Claim 31 is not anticipated by the '707 patent. Claims 33, 34, and 36 each depend from Claim 31. Thus, Claims 33, 34, and 36 include all the features of amended Claim 31 and recite unique combinations of additional features not taught or suggested by the cited references. Therefore, the Applicant respectfully requests that the Examiner withdraw the rejections of Claims 33, 34, and 36.

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Claims 5, 6, 15, 16, 28, and 35

The rejections of Claims 5, 6, 15, 16, 28, and 35 are moot in light of the cancellation of those claims.

Rejection Of Claims 10-13, 22, 23, 32, 34, 37, and 38 Under 35 U.S.C. § 103

The Final Office Action rejected Claims 10-13, 22, 23, 32, 34, 37, and 38 under 35 U.S.C. § 103 as being unpatentable over the '707 patent. The Applicant respectfully traverses this rejection because the '707 patent, either alone or in combination with other references of record, fails to teach or suggest all of the elements of the claims. See M.P.E.P. § 2143 (stating that in order to establish a *prima facie* case of obviousness for a claim, the prior art references must teach or suggest all the claim limitations).

Claims 10-13

As described above, the Applicant submits that amended Claim 1 is patentable over the '707 patent. Claims 10-13, which depend from Claim 1, are believed to be patentable for at least the same reasons articulated above with respect to amended Claim 1, and because of the additional features recited therein. Therefore, the Applicant respectfully requests that the Examiner withdraw the rejections of Claims 10-13.

Claims 22 and 23

As described above, the Applicant submits that amended Claim 14 is patentable over the '707 patent. Claims 22 and 23, which depend from Claim 14, are believed to be patentable for at least the same reasons articulated above with respect to amended Claim 14, and because of the additional features recited therein. Therefore, the Applicant respectfully requests that the Examiner withdraw the rejections of Claims 22 and 23.

Claims 32, 34, 37, and 38

As described above, the Applicant submits that amended Claim 31 is patentable over the '707 patent. Claims 32, 34, 37, and 38, which depend from Claim 31, are believed to be patentable for at least the same reasons articulated above with respect

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to amended Claim 31, and because of the additional features recited therein. Therefore, the Applicant respectfully requests that the Examiner withdraw the rejections of Claims 32, 34, 37, and 38.

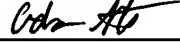
Summary

The Applicant respectfully submits that all of the pending claims are allowable. The Applicant respectfully requests that the Examiner withdraw the rejections and to pass Claims 1, 4, 7-14, 17-25, 27, 29-34, and 36-38 to allowance. In addition, please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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